Application No.: 10/776,619
Amendment and RCE dated: January 30, 2006
Reply to Office Action dated: September 28, 2005

REMARKS/ARGUMENTS

Claims 1-19 are pending in the application. Claims 1-19 are rejected. Claims 1, 7, 10, 15, and 17 have been amended.

Claims 18-19 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 7-8 and 17-19 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,370,454 to Moore (hereinafter "Moore"). Claims 1-19 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application No. 2001/0056359 to Abreu (hereinafter "Abreu"). Claims 10-14 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,714,893 to Busche et al. (hereinafter "Busche"). Claims 1-6, 15, and 16 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application No. 2004/0267608 to Mansfield Jr. (hereinafter "Mansfield"). Claims 7-9 and 17-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over a standard product recall. Claims 15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Busche. Claims 10-14 were rejected under 35 U.S.C. §103(a) as being unpatentable over the "Tread Act" of Congress (Public Law 106-414-Nov. 1, 2000) (hereinafter "Tread Act"). Claims 17-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over section 12 of the Tread Act.

Claim Rejections Under 35 U.S.C. §112

Claims 18-19 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. As discussed with the Examiner, this was a typographical error caused by a glitch of Microsoft Word that appeared in the response only. This error has been corrected.

Application No.: 10/776,619
Amendment and RCE dated: January 30, 2006
Reply to Office Action dated: September 28, 2005

Claim Rejections Under 35 U.S.C. §102

Claims 7-8 and 17-19 were rejected under 35 U.S.C. §102(b) as being anticipated by

Moore. Moore discloses a method and apparatus for the maintenance of mechanized equipment

such as an automobile (*See* Abstract).

Moore fails to teach or suggest determining whether the instance relates to a product

defect previously undetected in the product line, as recited in claims 7 and 17. These claims

would affirmatively require determining whether an instance of product performance that fails a

benchmark relates to a previously undetected product defect. This element is not present in

Moore, as Moore deals with a single piece of equipment rather than a product line.

As Moore does not teach or suggest determining whether the instance relates to a

previously undetected product defect, an element of claims 7 and 17 is not disclosed by Moore.

Therefore, claims 7 and 17, and by their dependency claims 8-9 and 18-19, are not anticipated by

Moore.

Claims 1-19 were rejected under 35 U.S.C. §102(b) as being anticipated by Abreu.

Abreu discloses an automated system and method for communicating product information to

consumers through a central computer using a distributed computer network.

Abreu fails to teach or suggest a recall operations system to manage return, repair and

service procedures to process a recall of defective products from various entities in a product

distribution chain, as recited in claim 1.

The Office Action cites a passage from Abreu that states:

The GPI system 1 is also designed to acquire information from the user 90 which may be
significant from a warning or recall standpoint. The GPI system 1 uses biological

81786_1.DOC   - 9 -

Application No.: 10/776,619
Amendment and RCE dated: January 30, 2006
Reply to Office Action dated: September 28, 2005

variables to determine if a certain UPI product has been consistently and temporally associated with an abnormal biological variable. In the case that hundreds of users using a certain drug PPS transfer biological variables consistent with abnormal heart rate, then the data meet the criteria for potential harmful effect of the drug PPS. This information can then, for example, be transferred to the RIS 60 as "drug PPS potentially implicated with abnormal heart rate". In this scenario the GPI system 1 acts as an auxiliary in the detection of harmful products. The same approach applies to the detection of a certain plant number or lot numbers causing widespread illness or injury. The information thus can be used for locating plants for inspection. The system 1 can also identify contaminated food before an outbreak occurs. The users can transmit information to the GPI system 1 about their symptoms and comments on the product such as labeling, appearance, questionable ingredients, and the like. When a certain number of users report similar symptoms after ingesting the same food, the GPI system 1 identifies a potential outbreak. The system GPI 1 then can transfer this information back to the RIS 60.

(Abreu, Paragraph 251).

Information such as where the user should go to get tested by a doctor and any other necessary information relating to new prescriptions clearly does not constitute return, repair and service procedures. Rather, Abreu is dealing with attending to the health of the customer, and correcting any damages caused to the customer by the faulty product, rather than fixing the product itself. Thus, an element of claim 1 is not disclosed by Abreu. Therefore, claim 1, and by their dependency claims 2-6, are not anticipated by Abreu.

Abreu fails to teach or suggest determining whether the instance relates to a previously undetected product defect and generating an alert regarding the previously undetected product defect if it is, as recited in claims 7 and 17. Again, the Office Action cites to paragraph 251 of Abreu, reproduced in its entirety above.

Abreu identifies a potential problem if the number of incidents reaches a certain level. Abreu does not determine whether an instance of product performance that fails a benchmark is an instance of first occurrence for the purpose of issuing an alert. Even in claims 8 and 18,

81786_1.DOC
                                        - 10 -

Application No.: 10/776,619
Amendment and RCE dated: January 30, 2006
Reply to Office Action dated: September 28, 2005

where multiple instances of failure occur, this limitation is still present and active. In claims 8

and 18, an alert is generated upon first instance of product failure and again when the failure rate

exceeds statistical limits. Thus, an element of claims 7 and 17 are not disclosed by Abreu.

Therefore, claims 7 and 17, and by their dependency claims 8-9 and 18-19, are not anticipated by

Abreu.

Abreu fails to teach or suggest classifying the terminal as one of multiple audience

member types for a product of the product producer and regulating the terminal's access to recall

repository data about the product based upon the terminal's classified audience member type, as

recited in claims 10 and 15.

The Office Action cites a passage from Abreu that states:

The information about products (codes and/or names) being used and stored in the central
server 10 (or GPI), can be accessed only by the users of such products. They preferably
are required to enter a proper identification and password. To further assure the
confidentiality of the information about products being used, biometric identification
devices such as iris scanners, retinal scanners, fingerprint readers, voice recognition
systems, and the like can be used to verify the identity of the user before accessing the
database of the central server 10 or using the IECLD 40. The biometric data system also
can be used by users who are visually or hearing impaired. The central server 10 (or
GPI) can continuously receive and/or acquire updates on products, with the new
information about the harmful products immediately being transmitted to the unique user
of such harmful products. A menu-type message can be generated with the most critical
hazard placed first and with a decreasing order of severity presented when the
message/warning is transmitted. Certain information, such as the cardiac effects of
products being used, can be stored and thus the user has the option to store and index the
particular information in the database of the central server 10 (or GPI) under his/her
username, which enables the user to review products which are or were used that affect
the heart, and this information can be transferred to the user's doctor as well.

(Abreu, Paragraph 142).

Excluding non-audience members from the product information is not classifying

audience members by audience member-type, nor is it regulating that access based on that type.

81786_1.DOC   - 11 -

In Abreu, only one class of audience member exists and that audience member is the product

user. The product users are not further classified by audience member type. Therefore, an

element of claims 10 and 15 is not disclosed by Abreu. Therefore, claims 10 and 15, and by their

dependency claims 11-14 and 16, are not anticipated by Abreu.

Claims 10-14 were rejected under 35 U.S.C. §102(e) as being anticipated by Busche.

Busche discloses an enhanced concern indicator failure prediction system to predict possible

product failures with automatic notification of people as well as systems (*See* Abstract).

Busche fails to teach or suggest classifying the terminal as one of multiple audience

member types for a product of the product producer and regulating the terminal's access to recall

repository data about the product based upon the terminal's classified audience member type, as

recited in claim 10.

The Office Action cites a passage from Busche that states:

> Narrowcasting 440 distributes triggering data to subscribers. Narrowcasting is the
> technique of distributing pertinent information to the precise destinations that require this
> information. As contrasted with simply broadcasting information, this technique avoids
> overloading the destination with information that not immediately useful. For example, a
> tire distributor may desire to see failure information relating to his tire brands but would
> not be interested in failure information relating to the brake system. Subscribers may be
> systems 450, such as pagers, e-mail, or other automated systems. Subscribers may also
> be people. For example, a person may monitor for failures at user dashboard 452.

(Busche, Column 7, lines 12-24).

As the user is the one deciding what information the user will and will not receive, access

to the information is not regulated. Nothing prevents every user from receiving all information if

that is what is chosen by those users. Further, no distinction is made between members of the

audience. Each member of the audience is allowed to receive whatever information that member

81786_1.DOC   - 12 -

Application No.: 10/776,619
Amendment and RCE dated: January 30, 2006
Reply to Office Action dated: September 28, 2005

wants. Thus, elements of claim 10 are not disclosed by Busche. Therefore, claim 10, and by

their dependency claims 11-14, are not anticipated by Busche.

Claims 1-6, 15, and 16 were rejected under 35 U.S.C. §102(e) as being anticipated by

Mansfield. In Mansfield, a system for determining customer identifiers associated with purchase

of product items which are recalled includes a computer database management system and

network (*See* Abstract).

Mansfield fails to teach or suggest an early warning system to manage product

performance data from a variety of sources in a product distribution chain and to detect a pattern

of product defects therefrom and generate an alert, as recited in claim 1.

Mansfield states:

> In step 210, a manufacturer decides to recall. Preferably, the manufacturer determines
> the specification of the recall. Typically, the recall specification defines at least one
> product UPC, identifiable product items, geographic regions, time periods (*e.g.*, date
> ranges), retailers, and specific stores. The recall specification defines the scope of the
> recall and any data that accomplishes this goal may be used for this invention. It should
> be noted that identification of the product without any other limitations would indicate a
> general recall of all outstanding product items for that product.

(Mansfield, Paragraph 0024).

A manufacturer deciding to perform a recall is not an early warning system as defined by

the claims. No mention is made in Mansfield of the manufacturer managing product

performance data from a variety of sources in a product distribution chain and detecting a pattern

of product defects and generating an alert. Thus, an element of claim 1 is not disclosed by

Mansfield. Therefore, claim 1, and by their dependency claims 2-6, are not anticipated by

Mansfield.

Application No.: 10/776,619
Amendment and RCE dated: January 30, 2006
Reply to Office Action dated: September 28, 2005

Mansfield fails to teach or suggest classifying the individual participants as one of

multiple audience member types for a product of the producer and transferring to authenticated

participants, recall tracking information and recall notification information based on audience

member type, as recited in claim 15 as amended. The product group is an entire audience as

defined in the claims and not an audience member type. Nobody outside that product group

would be interested in that information. Access to the information is not based on audience

member type in Mansfield. Therefore, claim 15, and by its dependency claim 16, are not

anticipated by Mansfield.

Claim Rejections Under 35 U.S.C. §103(a)

To establish *prima facie* obviousness of a claimed invention, all the claim limitations

must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA

1974).

Claims 7-9 and 17-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over

a standard product recall. Traditional product recall does not disclose determining whether the

instance relates to a previously undetected product defect and generating an alert regarding the

previously undetected product defect if it is, nor does it disclose performing this analysis with a

computer.

This determination is never made in traditional product recall, with an alert generated on

that basis. Moreover, the Office Action has provided no evidence beyond its own definitions to

describe a "traditional product recall." As described in Section 2144.03(B) of the Manual of

Patent Examining Procedure, general conclusions concerning what is "basic knowledge" or

Application No.: 10/776,619
Amendment and RCE dated: January 30, 2006
Reply to Office Action dated: September 28, 2005

"common sense" to one of ordinary skill in the art without specific factual findings and some

concrete evidence in the record to support these findings will not support an obviousness

rejection. Thus, an element of claims 7 and 17 is not disclosed. Therefore, claims 7 and 17, and

by their dependency claims 7-9 and 18-19, are not obvious.

Claim 15 was rejected under 35 U.S.C. §103(a) as being unpatentable over Busche. As

stated above, Busche does not teach or suggest classifying the individual participants as one of

multiple audience member types for a product of the producer and transferring to authenticated

participants, recall tracking information and recall notification information based on audience

member type. Busche merely determines whether one is a member of the audience. Busche

does not distinguish between members of the audience. Further, the Office Action does not

provide any art that discloses recording authenticated participants' receipt of the recall

notification information in the recall repository. Thus, elements of claim 15 are not disclosed by

Busche. Therefore, claim 15 is not obvious in view of Busche.

Claims 10-14 were rejected under 35 U.S.C. §103(a) as being unpatentable over the

Tread Act. The Tread Act does not teach or suggest classifying the terminal as one of multiple

audience member types for a product of the product producer, as recited in claim 10 as amended.

The Office Action argues that the government is a product producer, listing a large list of

government products and services. However, none of these products or services would be the

subject of a recall under the Tread Act. Therefore, it is not reasonable to construe the

government as a producer of products for purposes of this rejection and so Applicants submit

that claims 10, and by their dependency claims 11-15, are not obvious.

81786_1.DOC   - 15 -

Application No.: 10/776,619
Amendment and RCE dated: January 30, 2006
Reply to Office Action dated: September 28, 2005

Claims 17-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over section

12 of the Tread Act. The Tread Act does not disclose determining whether the instance relates to

a previously undetected product defect and generating an alert regarding the previously

undetected product defect if it is, as recited in claim 17 as amended. The Tread Act is clearly not

determining whether an instance was a first occurrence, and is just as clearly not performing any

of these steps by a processing device. Thus, an element of claims 17 is not disclosed. Therefore,

claims 17, and by their dependency claims 18-19, are not obvious.

For all the above reasons, the Applicant respectfully submits that this application is in

condition for allowance. A Notice of Allowance is earnestly solicited.
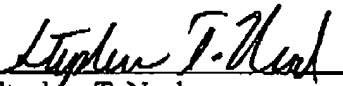
The Examiner is invited to contact the undersigned at (408) 975-7500 to discuss any

matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments

under 37 C.F.R. §1.16 or §1.17 to Deposit Account No. 11-0600.

Respectfully submitted,

KENYON & KENYON

Dated: January 30, 2006   By: _Stephen T. Neal_
                                           Stephen T. Neal
                                           (Reg. No. 47,815)

KENYON & KENYON
333 West San Carlos Street, Suite 600
San Jose, CA 95110

Telephone: (408) 975-7500
Facsimile: (408) 975-7501

81786_1.DOC   - 16 -